21210

(17,606.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 183.

THE ST. PAUL GAS LIGHT COMPANY, PLAINTIFF IN ERROR,

vs.

THE CITY OF ST. PAUL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 2, 1900.

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1 To the Honorable Charles M. Start, chief justice of the supreme court of the State of Minnesota:

Now comes the St. Paul Gas Light Company, a corporation organized and existing under and by virtue of the laws of the State of Minnesota and having its place of business in the city of St. Paul, in said State, by its attorney, Frank W. M. Cutcheon, and complains that in the records and proceedings, and also in the rendition of the judgment in a suit between said St. Paul Gas Light Company, plaintiff, and The City of St. Paul, defendant, in the supreme court of said State of Minnesota (said court being the highest court of law or equity in said State of Minnesota in which a decision could be had in said suit), notwithstanding it was contended and asserted by said plaintiff that under and by virtue of chapter 53 of the Special Laws of Minnesota 1856, being an act of the legislature of the Territory of Minnesota entitled "An act to incorporate the St. Paul Gas Light Company," approved March 1st, 1856, and the acceptance of said act by said plaintiff, and the action of said defendant thereunder in directing said plaintiff, by resolution of its board of aldermen and common council, to erect and light lamps in the streets of said defendant, and the action of said plaintiff in obedience to such orders in contracting for, furnishing, providing, laying, setting up, and keeping in good repair at its own proper expense and charge all the street posts and lamps and their pipes and meters (of the best quality of work and material) so directed to be erected and lighted, an irrevocable contract was formed between the State
2 of Minnesota and said defendant, upon the one part, and plaintiff, upon the other part, whereby defendant became bound to pay unto plaintiff interest at the rate of eight per cent. per annum upon the amount of the sum of the original cost of said street lamps and lamp posts, gas meters and gas pipes, and the cost of erecting and laying the same from the date of the furnishing of the same respectively to the date of the expiration of plaintiff's charter life, and that the right conferred upon plaintiff by said contract had vested in it and become its property prior to any of the acts or proceedings complained of by plaintiff in said suit, and that a certain resolution adopted by the common council of said defendant (approved by the mayor of said defendant on the twentieth day of August, 1897) under authority conferred upon defendant by acts of the legislature of said State of Minnesota which constitute the charter of the defendant city; which resolution reads as follows:

"Resolved, That the St. Paul Gas Light Company be and it is hereby required forthwith to remove the gas street lamp posts in that portion of the city now lighted by electric light under contract with said company, and which said lamps have been discontinued by order of the board of public works.

"Resolved, further, That the board of public works is hereby required to transmit to the city comptroller a statement showing the number and location of said gas street lamp posts not now in service in said electric light district above referred to, and that

from and after the passage of this resolution no interest be paid by the city of St. Paul to said St. Paul Gas Light Company on account of the cost of the purchase and equipment of said
3 gas street lamp posts," was a law of said State of Minnesota impairing the obligation of plaintiff's said contract, and that said resolution and the acts and doings of the defendant thereunder operated to deprive plaintiff of its property without due process of law and without just compensation, and that said resolution and all acts of the legislature of the State of Minnesota which empowered said council to pass the same and all acts and doings of defendant thereunder had been in direct and necessary violation of section 10 of article 1 of the Constitution of the United States and of section 1 of article 14 of the amendments to said Constitution of the United States, a final judgment was rendered by said supreme court of Minnesota against said plaintiff upon the 12th day of December, A. D. 1899, wherein it was adjudged that said contract above set forth did not bind said defendant to pay interest to plaintiff upon the costs of any of the street lamps, posts, pipes, or meters furnished, as aforesaid, by plaintiff, except during such period as the same might be used in the service of defendant under contract between plaintiff and defendant, and that said resolution of the common council of said defendant did not impair the obligation of plaintiff's said contract, and also that said resolution and the acts and doings of defendant thereunder did not operate to deprive said plaintiff of its property without due process of law or just compensation, all of which appears in the records and pleadings in said suit, and is contrary to the provisions of section 10 of article I of the Constitution of the United States and section
4 1 of article XIV of the amendments to said Constitution of the United States, whereby manifest error has happened to the great damage of said plaintiff.

Wherefore said St. Paul Gas Light Company, plaintiff and respondent aforesaid, prays for the allowance of a writ of error and for such other process as may cause the decision of said supreme court of Minnesota to be reviewed and corrected by the Supreme Court of the United States.

F. W. M. CUTCHEON,
Attorney and of Counsel for St. Paul Gas Light Company, Plaintiff.

GEO. C. SQUIRES, *Of Counsel.*

Let writ issue.

CHAS. M. START,
Chief Justice Supreme Court of the State of Minnesota.

St. Paul, Minnesota, Dec'b'r 28, 1899.

5 [Endorsed:] 11741. Copy. Petition for writ of error to remove suit of St. Paul Gas Light Company, plaintiff, vs. City of St. Paul, defendant, to Supreme Court of the United States. Endorsed: Filed Dec. 28, 1899. Darius F. Reese, clerk.

6 STATE OF MINNESOTA:

Supreme Court.

ST. PAUL GAS LIGHT COMPANY, Plaintiff,
vs.
CITY OF ST. PAUL, Defendant.

On reading and filing the petition of the above-named plaintiff for a writ of error to the United States Supreme Court, and on motion of Mr. George C. Squires, of counsel for said plaintiff:

It is ordered that the said petition be, and the same is hereby, granted, and that a writ of error issue forthwith as prayed for in said petition.

Dated December 28th, 1899.

CHAS. M. START,
Chief Justice Supreme Court of the State of Minnesota.

7 [Endorsed:] 11741. State of Minnesota, supreme court. St. Paul Gas Light Co., plaintiff, *vs.* City of St. Paul, defendant. Order allowing writ of error.
Endorsed: Filed Dec. 28, 1899. Darius F. Reese, clerk.

8 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Minnesota, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The St. Paul Gas Light Company, plaintiff, and The City of St. Paul, defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or of a statute or of
9 a commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff, St. Paul Gas Light Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly,

you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof. that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 28th day of December, in the year of our Lord one thousand eight hundred and ninety-nine.

[Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.]

HENRY D. LANG,
Clerk of the Circuit Court of the United States for the District of Minnesota.

Allowed by—
CHAS. M. START,
Chief Justice of the Supreme Court of the State of Minnesota.

10 STATE OF MINNESOTA, *ss:*

Supreme Court.

I hereby certify that this writ of error was duly served this 28th day of December, 1899, and that a true copy thereof was delivered to and lodged with the undersigned clerk of said court on said day.

[Seal of the Supreme Court, State of Minnesota.]

D. F. REESE,
Clerk of the Supreme Court of the State of Minnesota.

11 [Endorsed:] 11741, original. In the Supreme Court of the United States. St. Paul Gas Light Company, plaintiff in error, *vs.* City of St. Paul, defendant in error. Writ of error.
Endorsed: Filed Dec. 28, 1899. Darius F. Reese, clerk.

12 STATE OF MINNESOTA:

Supreme Court.

ST. PAUL GAS LIGHT COMPANY, Plaintiff,
vs.
CITY OF ST. PAUL, Defendant.

Certificate of Chief Justice.

I do hereby certify that in the above-named case there was drawn in question the validity of a resolution of the common council of said defendant approved August 20th, 1897, set forth in full in the complaint in said case, and referred to in the findings of fact made therein by the judge before whom said case was tried, and of the statutes of said State authorizing the adoption of the same, on the

ground that the same were laws of said State of Minnesota and repugnant to section 10 of article I of the Constitution of the United States, and that the decision of the court was in favor of their validity, and that said plaintiff also claimed that by said statutes, resolution, and the acts of the defendant thereunder said plaintiff had been deprived of a certain property right claimed by it without due process of law, and set up and claimed said right and immunity from such action under the fourteenth article of the amendments of the Constitution of the United States, and the decision of the
13 court was against said right and immunity.

CHAS. M. START,
Chief Justice of the Supreme Court of Minnesota.

14 [Endorsed:] 11741, original. State of Minnesota, supreme court. St. Paul Gas Light Company, plaintiff, *vs.* City of St. Paul, defendant. Certificate of chief justice.
Endorsed: Filed Dec. 28, 1899. Darius F. Reese, clerk.

15 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To City of St. Paul, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Minnesota, wherein The St. Paul Gas Light Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the city of St. Paul, in the State of Minnesota, this 28th day of December, in the year of our Lord one thousand eight hundred and ninety-nine.

CHAS. M. START,
Chief Justice of the Supreme Court of the State of Minnesota.

Service of the foregoing citation by copy and the exhibition to me of the original signature of Charles M. Start, chief justice of
16 the supreme court of the State of Minnesota, appended to the original thereof, was made this 28th day of Dec'b'r, 1899, and is hereby admitted.

St. Paul, Minnesota.

JAMES E. MARKHAM,
Attorney for Above-named City of St. Paul, Defendant in Error.

STATE OF MINNESOTA, *County of Ramsey,* } *ss:*

On this 28th day of Dec'b'r, A. D. 1899, personally appeared before me, the subscriber and clerk of the supreme court of the State

of Minnesota, George C. Squires, and makes oath that he delivered a true copy of the foregoing citation to James E. Markham, attorney for The City of St. Paul, defendant in error named in said citation, at St. Paul, Minnesota, on this 28th day of Dec'b'r, 1899, and that he then and there exhibited to said James E. Markham the original signature of Charles M. Start, chief justice of the supreme court of the State of Minnesota, which is appended to said original citation.

GEO. C. SQUIRES.

Subscribed and sworn to this 28th day of Dec'b'r, A. D. 1899.

[Seal of the Supreme Court, State of Minnesota.]

D. F. REESE,
Clerk of Supreme Court of State of Minnesota.

[Seal Supreme Court.]

17 [Endorsed:] 11741, original. In the Supreme Court of the United States. St. Paul Gas Light Company, plaintiff in error, *vs.* City of St. Paul, defendant in error. Citation. Endorsed: Filed Dec. 28, 1899. Darius F. Reese, clerk.

18 In the Supreme Court of the United States.

ST. PAUL GAS LIGHT COMPANY, Plaintiff in Error,
vs.
CITY OF ST. PAUL, Defendant in Error.

Bond.

Know all men by these presents that we, the St. Paul Gas Light Company, as principal, and the National Surety Company, a New York corporation, as surety, are held and firmly bound unto the City of St. Paul in the full and just sum of one thousand dollars ($1,000), to be paid unto said City of St. Paul, its successors and assigns; to which payment, well and truly to be made, we bind ourselves and our successors, jointly and severally, by these presents.

Sealed with our seals and dated this 28th day of December, A. D. 1899.

Whereas lately, at a session of the supreme court of the State of Minnesota, in a suit pending in said court between said St. Paul Gas Light Company, plaintiff, and said City of St. Paul, defendant, a final judgment was rendered against said plaintiff, and the said plaintiff having obtained a writ of error from the Supreme Court of the United States and filed a copy thereof in the clerk's office of said court to reverse said judgment in the aforesaid suit, and a citation to said City of St. Paul, citing and admonishing it to be and appear before the Supreme Court of the United States, to be holden at Washington, on the 27th day of January, A. D. 1900:

Now, the condition of the above obligation is such that if
19 the said St. Paul Gas Light Company shall prosecute said writ of error to effect and answer all costs and damages and fully pay to said City of St. Paul, its successors or assigns, the full

amount of said judgment of said supreme court of the State of Minnesota if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

ST. PAUL GAS LIGHT COMPANY,
[SEAL.] By F. W. M. CUTCHEON, *Vice-President.*
Attest: J. P. CROWLEY, *Secretary.*

NATIONAL SURETY COMPANY,
[SEAL.] By KENNETH CLARK,
Resident Vice-President.
Attest: W. S. McCURDY,
Resident Ass't Secretary.

Signed, sealed, and delivered in the presence of—
H. H. MERRICK.
J. F. FITZPATRICK.

20 STATE OF MINNESOTA, } *ss:*
County of Ramsey, }

On this 28th day of December, A. D. 1899, before me personally appeared William S. McCurdy, resident assistant secretary of the National Surety Company, one of the above-named corporations, with whom I am personally acquainted, who, being by me duly sworn, said that he resides in the city of St. Paul; that he is the resident assistant secretary of said corporation, the National Surety Company; that he knows the corporate seal of said corporation; that the seal affixed to said instrument is the corporate seal; that it was affixed by order of the board of directors of said corporation, and that he signed said instrument as resident assistant secretary of said corporation by like authority, and the said William S. McCurdy further said that he is acquainted with Kenneth Clark, and knows him to be the resident vice-president of said company; that the signature of said Kenneth Clark subscribed to said instrument is the genuine handwriting of said Kenneth Clark, and was thereto subscribed by like order of the said board of directors and in the presence of him, the said William S. McCurdy, resident assistant secretary, and the said William S. McCurdy acknowledged said instrument to be the free act and deed of said corporation.

[SEAL.] H. H. MERRICK,
Notary Public, Ramsey County.

It is hereby stipulated that the above and foregoing bond is in all matters and things sufficient, and that the same may be approved.

F. W. M. CUTCHEON,
Attorney for St. Paul Gas Light Company, Plaintiff in Error.
GEO. C. SQUIRES, *Of Counsel.*

JAMES E. MARKHAM,
Attorney for City of St. Paul, Defendant in Error.

21 Approved December 28th, 1899.

CHAS. M. START,
Chief Justice of the Supreme Court of Minnesota.

22 STATE OF MINNESOTA, }
Department of Insurance. }

ST. PAUL, MINN., 12, 28, 1899.

I, J. A. O'Shaughnessy, insurance commissioner of the State of Minnesota, do hereby certify that the National Surety Company of New York is a corporation organized under the laws of the State of New York and is authorized under its charter to guarantee fidelity of persons holding places of public or private trust, to guarantee the performance of contracts other than insurance policies, and to execute and guarantee bonds and undertakings required or permitted in actions and proceedings at law; that it appears to my satisfaction from sufficient evidence on file in my office of commissioner of insurance of said State of Minnesota that said corporation, the National Surety Company of New York, has furnished the same security which is required by law and the regulations of my department of life insurance companies under the provisions of sections 355 to 358, inclusive, of chapter 34, General Laws of the State of Minnesota of one thousand eight hundred and seventy-eight (1878).

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

J. A. O'SHAUGHNESSY,
[SEAL OF DEP'T OF INS.] *Insurance Commissioner.*

23 [Endorsed:] 11741. Copy. In the Supreme Court of the United States. St. Paul Gas Light Company, plaintiff in error, *vs.* City of St. Paul, defendant in error. Bond. Due service of this bond by copy thereof is hereby admitted this 28th day of December, 1899. James E. Markham, attorney for defendant in error.

Endorsed: Filed Dec. 28, 1899. Darius F. Reese, clerk.

24 In the Supreme Court of the United States.

ST. PAUL GAS LIGHT COMPANY, Plaintiff in Error, }
vs.
CITY OF ST. PAUL, Defendant in Error. }

Assignment of Errors.

And now comes The St. Paul Gas Light Company, the plaintiff in error above named, by Frank W. M. Cutcheon, its attorney, and says that in the record and proceedings of the suit aforesaid there is manifest error in this, to wit:

I. The supreme court of Minnesota erred in its decision of said suit in holding that the contract between the plaintiff in error and the defendant in error embodied in section 9 of chapter 53, Special

Laws of Minnesota 1856, being an act of the legislature of the Territory of Minnesota entitled "An act to incorporate the St. Paul Gas Light Company," approved March 1st, 1856, and formed by the passage and acceptance of said act, did not, in consequence of the adoption of the resolutions of the board of aldermen and common council of defendant in error directing plaintiff in error to erect and light lamps in the streets of said city, defendant in error, and the acts of plaintiff in error performed in obedience to said resolutions, obligate the defendant in error to pay to plaintiff in error an
25 interest of eight per cent. per annum upon the amount of the sum of the original cost of the lamps, lamp posts, pipes, and meters erected and furnished by plaintiff in error in obedience to said resolutions except for periods during which said lamps were actually in the service of defendant in error under contract for lighting the same between plaintiff in error and defendant in error.

II. The supreme court of Minnesota erred in its decision of said suit in holding that the said contract between the plaintiff in error and the defendant in error embodied in said section 9 of chapter 53, Special Laws of Minnesota 1856, and formed as aforesaid, did not obligate the defendant in error to pay to plaintiff in error an interest of eight per cent. per annum upon the amount of the cost of every lamp, lamp post, pipe, and meter erected in obedience to the order of defendant in error given, as hereinabove stated, for the whole period elapsing between the date of the erection and furnishing of such lamp, post, pipe, or meter and the date for the expiration of the term of the charter act of plaintiff in error, to wit, said chapter 53 of the Special Laws of Minnesota 1856.

III. The supreme court of Minnesota erred in its decision of said suit in holding that the resolution of the common council of said defendant in error approved August 20th, 1897, and set forth in full in the complaint herein, which read as follows:

"Resolved, That the St. Paul Gas Light Company be, and it is hereby, required forthwith to remove the gas street lamp posts in that portion of the city now lighted by electric light under
26 contract with said company, and which said lamps have been discontinued by order of the board of public works.

"Resolved further, That the board of public works is hereby required to transmit to the city comptroller a statement showing the number and location of said gas street lamp posts not now in service in said electric light district above referred to, and that from and after the passage of this resolution no interest be paid by the city of St. Paul to said St. Paul Gas Light Company on account of the cost of the purchase and equipment of said gas street lamp posts," is not a law of said State of Minnesota within the meaning of section 10, article 1, of the Constitution of the United States.

IV. The supreme court of Minnesota erred in its decision of said suit in holding that said resolution of the common council of defendant in error approved August 20th, 1897, does not impair the obligation of the said contract between plaintiff in error and defendant in error embodied in said section 9 of said chapter 53 of the Special Laws of Minnesota 1856, and formed as hereinabove set

forth, and that said resolution is not in conflict with the provisions of section 10, article I, of the Constitution of the United States, which declares that no State shall pass any law impairing the obligation of contracts.

V. The supreme court of Minnesota erred in its decision of said suit in holding that said resolution of the common council of defendant in error approved August 20th, 1897, and the acts of the legislature of the State of Minnesota empowering said common council to pass the same do not impair the obligation of the
27 said contract between plaintiff in error and defendant in error embodied in said section 9 of said chapter 53 of the Special Laws of Minnesota 1856, and formed as hereinabove set forth, and that said resolution and each and all acts of the legislature of said State of Minnesota empowering said council to pass the same are not in conflict with the provisions of section 10, article I, of the Constitution of the United States, which declares that no State shall pass any law impairing the obligation of contracts.

VI. The supreme court of Minnesota erred in its decision of said suit in holding that the said resolution of the common council of defendant in error approved August 20th, 1897, and the acts and doings of defendant in error thereunder did not deprive plaintiff in error of property, to wit, of the rights vested in it under said contract embodied in said section 9 of said chapter 53 of the Special Laws of Minnesota 1856, and formed as hereinabove set forth, without due process of law, and that said resolution and the acts and doings of defendant in error thereunder are not in conflict with the provisions of section I of article XIV of the amendments to the Constitution of the United States, which declares that no State shall deprive any person of property without due process of law.

VII. The supreme court of Minnesota erred in its decision of said suit and in its final judgment entered thereon, in this, that it gave effect to said resolution of the common council of said defendant in error approved August 20th, 1897, and the acts and doings of said defendant in error thereunder, which said resolution was in direct and necessary violation of said section 10 of article I
28 of the Constitution of the United States, and which said resolution and the acts and doings of defendant thereunder were in direct and necessary violation of said section I of article XIV of the amendments to the Constitution of the United States.

VIII. The supreme court of Minnesota erred in its decision of said suit in directing that the judgment of the district court of Ramsey county, Minnesota, theretofore entered in said suit be reversed, and directing that judgment be entered in said suit against said plaintiff in error and in favor of said defendant in error.

IX. The supreme court of Minnesota erred in this, that by the record aforesaid it appears that the judgment given by it, as aforesaid, was given for said defendant in error and against said plaintiff in error, whereas, by the law of the land, the said judgment ought to have been given for the said plaintiff in error against said defendant in error.

And the said St. Paul Gas Light Company, plaintiff in error,

prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that the judgment heretofore entered in said suit by the district court of the State of Minnesota for the county of Ramsey, in said State, be reinstated with all its original force and effect, and that plaintiff in error may be restored to all things which it has lost by occasion of the said judgment of said supreme court of Minnesota.

F. W. M. CUTCHEON,
Attorney for Plaintiff in Error.

GEO. C. SQUIRES, *Of Counsel.*

29 [Endorsed:] 11741. Copy. In the Supreme Court of the United States. St. Paul Gas Light Company, plaintiff in error, *vs.* City of St. Paul, defendant in error. Assignment of errors. F. W. M. Cutcheon, counsel for plaintiff in error. Geo. C. Squires, of counsel.

Endorsed: Filed Dec. 28, 1899. Darius F. Reese, clerk.

30 STATE OF MINNESOTA:

Supreme Court, October Term, 1899.

ST. PAUL GAS LIGHT COMPANY, Respondent,
vs.
CITY OF ST. PAUL, Appellant.

Assignment of Errors.

1. The court erred in finding as a conclusion of law that the defendant is under obligation by reason of the facts found by the court and reported in its decision to pay to the plaintiff quarterly, during the term for which the act of the legislature of March 1, 1856, entitled "An act to incorporate the St. Paul Gas Light Company," shall remain in force, to wit, to and including the 31st day of March, 1906, interest at the rate of eight per cent. upon the cost of the 3,362 street lamp posts set up and established by the plaintiff in the streets of the defendant city, and under the order of its common council.

2. The court erred in finding and deciding as a conclusion of law that upon the facts found by the court the plaintiff is entitled to judgment against the defendant for the sum of $1,604 51, and for its costs and disbursements in this action, and erred in finding and deciding that the plaintiff was entitled to judgment against the defendant for any sum or amount whatever.

3. The court erred in refusing to find and determine as a conclusion of law upon the facts found by it and embraced in its decision in this action that the defendant is entitled to judgment against the plaintiff to the effect that the plaintiff take nothing by this action.

31 4. The court should have found and determined as a conclusion of law upon the facts found that the plaintiff is not entitled to recover interest upon the original cost of the 672 gas

street lamps, the lighting of which was discontinued prior to January 1, 1897, under the provisions of the contracts between the parties, dated March 16, 1896, and March 16, 1897, respectively, and which contracts are more particularly set forth in folios 112 to 119 of the printed record herein. Its refusal to so find was error.

5. The court below erred in rendering judgment against the defendant for $1,638.95, damages and costs, or for any sum or amount whatever.

[Endorsed:] 11741. Assignments of error. State supreme court. Endorsed: Filed Sept. 12, 1899. Darius F. Reese, clerk.

32 STATE OF MINNESOTA:

Supreme Court, October Term, 1899.

STATE OF MINNESOTA, *County of Ramsey.*

District Court, Second Judicial District.

ST. PAUL GAS LIGHT COMPANY, Plaintiff,
vs.
CITY OF ST. PAUL, Defendant.

Complaint.

Now comes the above-named plaintiff herein, The St. Paul Gas Light Company, and for its complaint against the defendant above named, The City of St. Paul, respectfully shows to the court and alleges:

Plaintiff is a corporation duly organized and existing under the laws of the State and late Territory of Minnesota, and par-
33 ticularly that certain act of the legislature of the late Territory of Minnesota approved March 1, 1856, entitled "An act to incorporate the St. Paul Gas Light Company," and certain acts of said Territory and State amendatory thereof.

Defendant is a municipal corporation incorporated and existing under the laws of the State of Minnesota, and particularly under an act entitled "An act to reduce the law incorporating the city of St. Paul, in the county of Ramsey and State of Minnesota, and the several acts amendatory thereof, and certain other acts relating to said city, into one act and to amend the same," which act was approved March 5, 1874, and the acts amendatory thereof and supplemental thereto.

Plaintiff is engaged, and during all the times herein mentioned has been engaged, in the business of manufacturing gas for the purpose of providing light, heat, and power, and of supplying the same to its customers in the city of St. Paul, Minnesota.

After the passage of said act of March 1, 1856, plaintiff duly accepted the same, and within the period limited by another act of the legislature of the Territory of Minnesota, approved Feb. 13, 1857, and entitled "An act to amend an act entitled 'An act to in-

corporate the St. Paul Gas Light Company;'" that is to say, prior to the first day of December, 1857, plaintiff did perform all and every the acts and things required to be performed by it in said act of March 1, 1856, as conditions precedent to the vesting in it of the powers, rights and privileges conferred by said act of
34 March 1, 1856; and particularly did construct and lay more than one and one-half miles of main gas pipe, and was ready to furnish and was furnishing gas and fixtures to said city and the inhabitants of said city of St. Paul, so far as they could be supplied from or in connection with any of said lines of main pipe laid as aforesaid; and plaintiff has ever since in each and all respects complied with and conformed to the provisions of all said acts, and has now for more than forty (40) years furnished to said city of St. Paul and its inhabitants gas for the purposes of illumination, fuel and power at any and all times and at all places accessible from its mains. In order so to do, plaintiff has constructed extensive gas works in said city at great cost, which works it has been obliged frequently to alter and extend and several times to rebuild, at great expense, and has constructed and laid and from time to time replaced and enlarged main pipes in the streets of said city, having an aggregate length of more than one hundred and seventeen (117) miles, besides large numbers of service pipes. Said work has been constantly progressing and the investments necessary to effect the same have been constantly making ever since the passage of said act of March 1, 1856.

Plaintiff has, during the entire fifteen years last past, at all times furnished steam for heating and power purposes and electricity for the purpose of illumination and power to said city of St. Paul and the inhabitants thereof, and in so doing has constructed two
35 large electrical plants and many miles of pole lines and wires, as well as steam conduits and pipes, and has installed large amounts of electrical machinery and appliances, all at great expense to it. In effecting these things, defendant has from time to time invested in its various works, plants, mains, pipes and wires, and the property which it has been obliged to purchase and operate as incident thereto, very large amounts of money, aggregating many hundreds of thousands of dollars. Defendant is still operating its gas and electrical works and its system of pipes and wires and is still supplying gas, electricity and steam to said city of St. Paul and its inhabitants.

In and by section 9 of said act of March 1, 1856, which said act and section are still and always have been since the passage thereof in full force and effect, it was and is provided as follows, to wit:

"SEC. 9. That it shall be the duty of the St. Paul Gas Light Company to prosecute the works necessary to the lighting the whole city and suburbs with gas, and to lay their pipes in every and all directions, whenever the board of directors shall be satisfied that the expenses thereon shall be counterbalanced by the income accruing from the sales of gas. It shall also be their duty to put the gas works into successful operation as soon as practicable: Provided, that whenever the corporation of the city of St. Paul shall, by resolu-

tion of the board of aldermen, direct lamps to be erected and lighted in the streets of the city, the company shall make contract therefor, and furnish and provide, lay, set up and keep in good repair, at their own proper expense and charge, the street posts and
36 lamps, and their pipes and meters, all to be of the best quality of work and material now in use. In consideration whereof, the said corporation of the city shall pay quarterly to the St. Paul Gas Light Company an interest of eight per cent. per annum on the amount of the sum of the original cost of said street lamps and lamp posts, gas meters and gas pipes, and the cost of laying and erecting the same. But said company shall not be bound to lay every pipe in such places where the proceeds from the sale of gas light would not be sufficient to defray the expenses of furnishing the same."

In and by said act of March 1, 1856, and plaintiff's acceptance thereof, and the action thereon above set forth, there was formed as of the first day of March, A. D. 1856, an irrevocable contract between the State of Minnesota on the one part, and plaintiff upon the other, whereby it was agreed and provided that whenever the corporation of the city of St. Paul should by resolution of the board of aldermen or common council of said city, direct lamps to be erected and lighted in the streets of said city, plaintiff should furnish and provide, lay, set up and keep in good repair, the same and all thereof, and all necessary meters and pipes therewith connected, at its own proper expense and charge, provided only that plaintiff was not bound thereby to lay its pipes in places where the proceeds from the sale of gaslight would not be sufficient to defray the expense of furnishing the same; and that whenever plaintiff, acting under any such direction of said city, should have erected and lighted any lamps so ordered for the streets of said city,
37 said city of St. Paul should thereafter, during the life of plaintiff's said charter act, pay unto plaintiff quarterly interest at the rate of eight per cent. per annum upon the amount of the sum of the original cost of all said street lamps, lamp posts, gas meters and gas pipes erected or furnished as aforesaid, and the cost of laying and erecting the same.

At various times heretofore, and prior to Jan. 1, 1897, the corporation of the city of St. Paul has, by resolution of its board of aldermen or common council directed lamps and posts to be erected and lighted by plaintiff in the streets of said city of St. Paul, to the aggregate number of three thousand three hundred and sixty-two (3,362), and in each and every such case plaintiff has made contract for the lamps and posts so ordered, and has furnished, provided, laid, set up and kept in good repair, at its own proper expense and charge, all such street posts and lamps and the pipes and meters connected therewith or necessary to supply the same, all of the best quality of work and material at any such time in use, and had so done prior to Jan. 1, 1897.

The original cost of the purchase and erection of said three thousand three hundred and sixty-two (3,362) street lamps and posts and of the purchase and laying of the service pipes connected there-

with, was the sum of eighty-five thousand five hundred and thirty-nine dollars and fifty-three cents ($85,539.53), all of which had been absolutely paid and expended therefor by plaintiff prior to
38 Jan. 1, 1897. Except as hereinafter stated, plaintiff has ever since the installation of each of said 3,362 lamps supplied the same with illuminating gas and kept the same lighted nightly under express contract or contracts with said defendant so to do.

Prior to the year 1897 defendant had directed plaintiff to cease to light seven hundred and seventeen (717) of said 3,362 street lamps, and terminated the contract between plaintiff and defendant under which plaintiff had theretofore supplied gas thereto, and lighted the same, and plaintiff had ceased to light said seven hundred and seventeen (717) street lamps, and defendant had ceased to pay for the supply of gas thereto or the lighting thereof, except as hereinafter stated.

Between Jan. 1, 1897, and May 1, 1897, plaintiff supplied gas to and lighted, under contract between plaintiff and defendant, only two thousand six hundred and forty-five (2,645) of said 3,362 street lamps, while seven hundred and seventeen (717) of said 3,362 street lamps remained during said period last mentioned idle and unused.

Thereafter, and prior to May 1, 1897, said defendant city, by resolution of its board of aldermen and common council, directed plaintiff to erect and light forty-five (45) more street lamps and posts in the streets of said city, in locations other than those in which said 3,362 lamps above mentioned, or any of them, were
39 situate. Whereupon plaintiff, with the consent of defendant, removed forty-five (45) of said seven hundred and seventeen (717) street lamps and posts that were then and there disused as aforesaid, to the locations respectively at which defendant had so ordered plaintiff to erect and light such forty-five new street lamps, and erected said forty-five street lamps in such locations respectively and connected the same with its system of mains, and thereafter, and on May 1, 1897, lighted, and thereafter and during the whole of the remainder of said year 1897, continued to light, the same under an express contract between plaintiff and defendant. The cost of transferring said forty-five lamps and posts and the service pipes connected therewith, and of erecting and laying the same as aforesaid, all of which was paid by plaintiff prior to May 1, 1897, was the sum of one hundred and forty-seven dollars and eighty-one cents ($147.81).

From May 1, 1897, to Dec. 31, 1897, inclusive, plaintiff, under contract with the defendant as aforesaid, supplied gas to and kept lighted, twenty-seven hundred and ninety (2,790) of said thirty-three hundred and sixty-two (3,362) street lamps, while six hundred and seventy-two (672) of said thirty-three hundred and sixty-two street lamps were idle and unused. The sum of the original cost of said six hundred and seventy-two street lamps and the erection thereof and of the purchase and laying of the service pipes connected therewith, was at least the sum of seventeen thousand eight hundred and thirty dollars and seventy-five cents ($17,830.75).

40 On or prior to the first day of February, 1898, there became due and payable by said defendant to plaintiff, on ac-

count of the interest for the year 1897 upon the cost of said thirty three hundred and sixty-two lamps and posts and pipes therewith connected, installed by plaintiff as aforesaid prior to Jan. 1, 1897 the sum of six thousand eight hundred and forty-three dollars and twelve cents ($6,843.12); and on account of the interest for that portion of the year 1897, beginning with the first day of May of said year, upon the cost of transferring and erecting said forty-five lamps and posts and pipes therewith connected, installed by plaintiff as aforesaid, between the first day of January, 1897, and the first day of May, 1897, the sum of seven dollars and eighty-seven cents ($7.87),—that is to say, the aggregate sum of six thousand eight hundred and fifty dollars and ninety-nine cents ($6,850.99) all in accordance with the provisions of said act of March 1, 1856 above mentioned.

Heretofore, and prior to the twentieth day of August, 1897, the common council of said city of St. Paul, claiming to be authorized so to do under and by virtue of the acts of the legislature of said State of Minnesota which form the charter of said city of St. Paul as aforesaid, passed a certain resolution, which said resolution was approved August 20, 1897, and reads as follows, viz:

"Resolved, That the St. Paul Gas Light Company be and it is
hereby required forthwith to remove the gas street-lamp posts
41 in that portion of the city now lighted by electric light under
contract with said company, and which said lamps have been discontinued by order of the board of public works.

"Resolved, further, That the board of public works is hereby required to transmit to the city comptroller a statement showing the number and location of said gas street-lamp posts not now in service in said electric light district above referred to, and that from and after the passage of this resolution no interest be paid by the city of St. Paul to said St. Paul Gas Light Company on account of the cost of the purchase and equipment of said gas street-lamp posts."

On or about the first day of July, 1897, plaintiff demanded of defendant the payment of the interest for the six months next preceding said day at the rate of eight (8) per cent. per annum, upon the cost of said thirty-three hundred and sixty-two (3,562) street lamps and posts erected by plaintiff prior to Jan. 1, 1897, and interest for the two months next preceding said day, at the same rate, on the cost of the transfer and erection of said forty-five street lamps and posts to wit: the sum of three thousand four hundred and twenty-three dollars and fifty-two cents (3,423.52); and thereafter, and on or about the first day of January, 1898, plaintiff demanded of defendant the payment of the interest for the six months next preceding said day upon the original cost of said thirty-three hundred and sixty-two (3,362) street lamps and posts, and of the transfer and erection of said forty-five (45) street lamps and posts above mentioned, to wit, the sum of three thousand four hundred and twenty-
seven dollars and forty-eight cents ($3,427.48), and although
42 the payment of such sums and each of them has frequently been demanded by plaintiff of defendant, defendant has

wholly neglected and refused to pay either of said sums save and except as follows, to wit:

Upon the twentieth day of October, 1897, defendant paid unto plaintiff the sum of two thousand seven hundred and ten dollars and twenty-one cents ($2,710.21), and upon the eighteenth day of January, 1898, defendant paid unto plaintiff the sum of two thousand seven hundred and thirteen dollars and eighty-three cents ($2,713.83), on account of interest upon the original cost of the construction of said thirty-three hundred and sixty-two lamp posts and of the transfer and erection of said forty-five lamp posts, for the year 1897, but defendant has refused to pay unto plaintiff the balance of the interest due unto plaintiff as aforesaid, to wit, the sum of one thousand four hundred and twenty-six dollars and forty-six cents ($1,426.46).

Plaintiff further alleges that said resolution of said common council of said defendant city, approved Aug. 20, 1897, and above set forth, and all acts of the legislature of the State of Minnesota, if any there be, which empowered said council to pass same, and all acts and doings of defendant thereunder, are in direct and necessary violation of section 11, article I, of the constitution of the State of Minnesota and of section 10 of article I of the Constitution of the United States, and of section 1 of article XIV of the amendments to said Constitution of the United States.

43 Wherefore, plaintiff demands judgment against said defendant for the sum of one thousand four hundred and twenty-six dollars and forty-six cents ($1,426.46), with interest at the rate of seven (7) per cent. per annum upon the sum of seven hundred and twelve dollars and eighty-one cents ($712.81) from the first day of July, 1897, and upon the sum of seven hundred and thirteen dollars and sixty-five cents ($713.65) at the same rate from the first day of January, 1898, and for its costs and disbursements of this action.

FLANDRAU, SQUIRES & CUTCHEON,
Attorneys for Plaintiff, 404 *New York Life Bldg.*,
St. Paul, Minn.

Answer.

(Title of Action.)

Now comes the above-named defendant, and for its answer to the complaint of the plaintiff herein, admits that said plaintiff is a corporation, organized and existing under and by virtue of the act of the legislature of the late Territory of Minnesota, mentioned in folio two of the complaint herein; admits that the defendant is a municipal corporation, organized and existing under the laws of the State of Minnesota, and admits that plaintiff is, and during all the times stated in the complaint herein has been, engaged in the business of manufacturing gas for the purpose of providing

44 light, heat and power, and supplying the same to its customers in the city of St. Paul.

Defendant denies that it has any knowledge or information suf-

ficient to form a belief as to what portion, if any, if the gas mains and gas pipes of said company were laid in the streets in the city of St. Paul prior to the first day of December, 1857, but admits that for a number of years the plaintiff has been a manufacturer and seller of gas to the city of St. Paul and its inhabitants, and has constructed extensive gas works and laid mains in many of the public streets of the city, and has invested large sums of money in the construction of its works and in the laying of its gas pipes and mains in the streets of said city for the purpose of enabling it to manufacture and supply gas for illuminating, heating and other purposes.

Defendant admits that section nine of the act of the legislature of the Territory of Minnesota, entitled "An act to incorporate the St. Paul Gas Light Company," approved March 1, 1856, contains the language set forth in folios eight and nine of the complaint herein, and that after the passages of said act the plaintiff duly accepted the same.

Further answering, defendant admits that at various times and on various occasions prior to Jan. 1, 1897, extending over a period of thirty years last past, the common council has, by resolution, directed that various streets in the city of St. Paul be lighted by
45 gas, and on each of these occasions plaintiff, at the request of the proper officers of defendant city, erected street-lamp posts at the points and to the number ordered and required by said city to be placed in the streets so ordered to be lighted by gas, and connected the same with its pipes and gas mains, all at its own proper cost and charge, in the aggregate number of three thousand, three hundred and sixty-two, and from time to time during said period prior to Jan. 1, 1897, plaintiff and defendant have entered into written contracts, providing for the maintenance of said street lamps, and the supplying and lighting thereof with illuminating gas at a price and for a period specified therein.

Defendant further admits that prior to Jan. 1, 1897, it directed plaintiff to cease to light seven hundred and seventeen of the said street lamps, and thereupon plaintiff ceased to light the same, and defendant ceased to pay for the supply of gas thereto or the lighting thereof, except as in said complaint stated, and that between Jan. 1, 1897, and May 1, 1897, plaintiff supplied gas to and lighted, under contract between plaintiff and defendant, only two thousand, six hundred and forty-five of said street lamps, while seven hundred and seventeen thereof remained idle and unused during said period.

Defendant further admits that prior to May 1, 1897, defendant, by resolution of its board of aldermen and common council,
46 directed plaintiff to erect and light forty-five more street lamps and posts in the streets of said city, in locations other than those in which the three thousand, three hundred and sixty-two lamps, or any of them, were located, and thereupon plaintiff, with consent of defendant, removed forty-five of said seven hundred and seventeen street lamps and posts, which had been discontinued as aforesaid, to the locations at which defendant had ordered plain-

tiff to erect and light such forty-five new street lamps and posts, and that said plaintiff did erect said forty-five street lamps and posts in such locations, and connected the same with its system of mains, and on May 1st, and during the remainder of said year 1897, plaintiff continued to light said forty-five lamps under a contract between plaintiff and defendant, which said contract is hereinafter specifically alleged.

Defendant further admits that from May 1, 1897, to Dec. 31, 1897, inclusive, plaintiff, under contract with defendant, which said contract is hereinafter specifically alleged, supplied gas to and kept lighted two thousand, seven hundred and ninety of said three thousand, three hundred and sixty-two street lamps, while six hundred and seventy-two of said three thousand, three hundred and sixty-two street lamps were idle and unused and had been discontinued during said last-named period.

Defendant denies that it has any knowledge or information
47 sufficient to form a belief as to the original cost of the purchase, erection, or laying of any of the street lamps, posts, pipes, or meters alleged in said complaint, or of the original cost of transferring or erecting said forty-five lamps and posts, or laying the service pipes connected therewith.

Defendant denies that on the first day of February, 1898, or at any other time whatsoever, there became due the plaintiff from defendant the sums alleged in said complaint on account of interest upon the original cost of the purchase, erection, transferring and laying of said lamps, posts, pipes and meters for the year 1897, or any other sum or sums whatsoever.

Defendant further admits that on or before the twentieth day of August, 1897, the common council of defendant passed the resolution set forth in folios twenty and twenty-one of said complaint, and thereafter that said plaintiff made demand of the defendant for the sums of money alleged in said complaint, and that defendant paid to plaintiff at the times alleged in said complaint the sums therein set forth.

Further answering, defendant alleges that heretofore, to wit, on the seventeenth day of February, 1896, defendant, by and through its proper officer, advertised for bids or proposals to be submitted to it for a contract to furnish defendant with gas lighting according to certain specifications theretofore duly prepared and filed by the board of public works of defendant with the city clerk of defendant; that in pursuance of said advertisement, plaintiff duly sub-
48 mitted its bid or proposal for said contract; that plaintiff was then and there the lowest responsible bidder for said contract; that thereupon said bid or proposal came before the common council of defendant for consideration, and said bid or proposal was thereupon duly accepted by said common council, and thereafter and on the fourteenth day of March, 1896, a written contract was duly entered into between plaintiff and defendant in pursuance of said accepted bid or proposal, in and by which the said plaintiff covenanted and agreed with the defendant to furnish for the period of one year from and after the first day of April, 1896, a supply of

illuminating gas for at least three thousand and thirty-one street lamps then in the streets, alleys, lanes, landings, parks and other public places within the limits of defendant, and to maintain and light the same according to said specifications for gas lighting, which said specifications were attached to said contract and made a part thereof; and said plaintiff further agreed in and by said agreement to erect and supply with light upon the terms and conditions in said contract stated, all the street lamps that might thereafter be ordered by defendant to be placed upon any of the said streets, alleys, lanes, landings, parks or other public places during the period covered by said agreement; that for and in consideration of the furnishing of said gas, defendant agreed to pay to plaintiff a sum specified in said contract.

49 It was further provided in and by said specifications that defendant should have the right to decrease, from time to time during the period of said contract, the number of lamps in service, and to discontinue the lighting with gas of the whole or any portion of the street or particular number of streets, or any particular section of said city, and from and after the service by said defendant city upon said plaintiff of a written notice of discontinuance of any such lamp or lamps, said plaintiff should not be entitled to any compensation for the further lighting of the lamp or lamps so ordered to be discontinued, and the further right was reserved to defendant in said contract to remove any lamp or lamps from one location to another upon a written order of the board of public works, the cost of such removal to be paid by said defendant at such compensation as said board of public works might determine as equitable and just.

Defendant further alleges that said contract did not provide any way whatsoever for the payment of any sum as interest to plaintiff on the original cost of the purchase, erection and laying of any of the said lamps or posts, or the surface pipes or meters connected therewith theretofore purchased and erected by plaintiff within the period provided in said agreement, under the direction of defendant as therein provided.

Defendant further alleges that the said seven hundred and seventeen street lamps and posts hereinbefore admitted to have

50 been discontinued under direction of defendant were so discontinued and the lighting of the said seven hundred and seventeen lamps relinquished under and by virtue of the said provision in said contract and specifications, by which the right was reserved to the city to decrease from time to time any number of the lamps in service of the city, and said defendant, after so discontinuing said lamps and posts, duly gave notice to plaintiff of the discontinuance of the same.

Defendant further alleges that heretofore, to wit, in the month of March, 1897, the defendant by and through its proper officer duly advertised for bids or proposals for contract to furnish defendant with gas lighting, according to certain specifications theretofore prepared and filed in the office of the city clerk of defendant by the board of public works of defendant; that thereupon plaintiff duly

made its bid or proposal for said contract; that said plaintiff was then and there the lowest responsible bidder for said contract; that thereupon the common council of defendant duly considered said bid, and thereafter duly accepted said bid or proposal and awarded said contract to plaintiff; that thereupon and on the sixteenth day of March, 1897, plaintiff and defendant duly entered into a written agreement in and by which plaintiff covenanted and agreed to furnish to defendant, for a period of nine months from and after the first day of April, 1897, a supply of illuminating gas sufficient to light any number not exceeding three thousand and
51 thirty-one street lamps at the time of the execution of said contract in place in the streets, alleys, lanes, landings, parks and other public places within the limits of defendant, and to maintain and light the same according to the specifications for gas lighting attached to said contract, which said specifications were made a part thereof; and said plaintiff further agreed in and by said agreement to erect and supply with light, upon the terms in said contract stated, all of the street lamps that might thereafter be ordered by defendant to be placed upon any of the streets, alleys, lanes, landings, parks or other public places in said city during the period provided by said agreement, in consideration whereof defendant agreed to pay plaintiff for the furnishing of such gas a sum specified in said agreement; that in and by said last-named contract and specifications, the right was reserved to defendant to decrease from time to time, the number of lamps in service and discontinue the lighting by gas of the whole or any portion of any street or any particular number of streets, or any particular section of said defendant city, and that from and after the service of defendant upon plaintiff of the written notice of the discontinuance of any such lamp or lamps, plaintiff should not be entitled to any compensation for the further lighting of the lamp or lamps so ordered discontinued; that in and by said last-named contract and specifications the further right was reserved to said defendant to re-
52 move any lamp or lamps from one location to another upon written order of the board of public works, the cost of such removal to be paid by the city of St. Paul at such compensation as the board of public works, or other board or officer charged with such duty, might determine as equitable and just.

Defendant further alleges that under and in pursuance of the contracts aforesaid, between the first day of January, 1897, and the first day of May, 1897, the common council of the city of St. Paul duly passed a resolution directing plaintiff to remove and relocate forty-five of the said seven hundred and seventeen street lamps and posts, which had been discontinued as hereinbefore alleged; that thereupon the plaintiff did relocate and remove, in pursuance of said resolution, the said forty-five street lamps and posts, upon receiving an order or direction so to do from the said board of public works; that said board of public works or said common council or any other officer has never determined the cost of such relocation or removal, nor has said plaintiff ever demanded that said board or any other officer ever take any steps to determine the same.

Defendant further alleges that it has paid full and complete payment to the plaintiff of all sums becoming due on each of said contracts prior to the commencement of this action.

53 Wherefore, defendant demands judgment that plaintiff take nothing by this action, and for its costs and disbursements herein.

JAMES E. MARKHAM AND
CARL TAYLOR,
Attorneys for Defendant, Room 40 Court-house and City Hall, St. Paul, Minnesota.

Reply.

(Title of Action.)

Now comes the above-named plaintiff, and for its reply to the answer of the defendant, The City of St. Paul above named, respectfully shows unto the court:

Plaintiff admits the truth of all the allegations of said answer, beginning with the eighth line of the ninth folio thereof, except as to such of the same as are herein denied or otherwise replied unto.

Plaintiff alleges that in and by said contract in said answer mentioned, entered into on the fourteenth day of March, 1896, it was expressly provided as follows, viz:

"It is expressly understood and agreed that none of the terms or provisions of this contract are to be construed to annul or modify in any way the obligation of said City of St. Paul to pay to said St. Paul Gas Light Company interest at the rate of eight (8) per cent. per annum, payable quarterly, upon the original cost of the street lamps, lamp posts, gas meters, gas pipes and the cost of erect-

54 ing and laying the same, at any time provided by said St. Paul Gas Light Company for the service of said City of St. Paul, at the request and order of said City of St. Paul as provided by the terms of section nine (9) of the act of the legislature of the State of Minnesota constituting the charter of said St. Paul Gas Light Company as aforesaid;" and that in the introductory portion of said contract, as one of the recitals thereof, occurs the following language:

"Whereas, under and by virtue of the terms of section nine (9) of the act of the legislature of said State of Minnesota constituting the charter of said St. Paul Gas Light Company, party of the first part, said City of St. Paul, Minnesota, party of the second part, is under obligation to pay to said party of the first part interest upon the original cost of the street lamps, lamp posts, gas meters, gas pipes and the cost of erecting and laying the same, at any time provided by said party of the first part for the service of said party of the second part, at the request or order of said party of the second part, at the rate of eight (8) per cent. per annum, payable quarterly;" and that in and by said contract in said answer mentioned, entered into on the sixteenth day of March, 1897, it is expressly provided as follows:

"It is also expressly understood and agreed that none of the terms or provisions of this contract are to be construed to waive or modify in any way the claim of said company that said City of St. Paul is also under obligation to pay to said St. Paul Gas Light Company interest at the rate of eight (8) per cent. per annum, payable quarterly, upon the original cost of the street lamps, lamp posts, gas meters, gas pipes, and the cost of erecting and laying the same at any time provided by said St. Paul Gas Light Company at the request or order of said City of St. Paul, under the provisions of section nine (9) of the act of the legislature of said State of
55 Minnesota constituting the charter of said St. Paul Gas Light Company, it being understood that neither party to this contract by the execution hereof waives any of its rights or claims in reference thereto."

Plaintiff denies that the agreement of defendant to pay plaintiff the sum specified in said contracts respectively, for furnishing gas to such additional street lamps as might be required by said defendant under either of said contracts was made in consideration of, or was the consideration for, either in whole or in part, the agreement of plaintiff to erect such lamps upon direction of said defendant.

Plaintiff expressly denies the allegations contained in the first three lines of folio 20 of said answer.

Wherefore, plaintiff prays judgment as in its complaint herein already demanded.

FLANDRAU, SQUIRES & CUTCHEON,
Attorneys for Plaintiff.

Findings of Fact and Conclusions of Law.

The action above entitled came on for trial before the undersigned, one of the judges of said court, without a jury (a jury therein having been waived), at the May, 1899, general term of said court. F. W. M. Cutcheon appeared as attorney for the plaintiff therein, and Hon. James E. Markham, corporation attorney of said city of St. Paul, appeared as attorney for the defendant therein.
56 After reading the pleadings, hearing and examining the proofs, and hearing argument of counsel, I do find the facts herein to be as follows:

Findings of Fact.

Plaintiff is, and at all times herein mentioned or referred to has been, a corporation duly organized and existing under the laws of the State and late Territory of Minnesota, and particularly that certain act of the legislature of the late Territory of Minnesota approved March 1, 1856, entitled "An act to incorporate the St. Paul Gas Light Company;" and defendant is, and at all such times has been, a municipal corporation incorporated and existing under the laws of the State of Minnesota.

After the passage of said act of March 1, 1856, plaintiff duly accepted the same, and, prior to the first day of December, 1857, did

perform all and every the acts and things required to be performed by it in said act of March 1, 1856, as conditions to the vesting in it of all the powers, rights and privileges conferred by said act of March 1, 1856. Plaintiff is engaged, and during all the times herein mentioned has been engaged, in the business of manufacturing gas for the purpose of providing light, heat and power and of supplying the same to its customers in the city of St. Paul, Minnesota; and for more than forty years has furnished to the city of St. Paul and its inhabitants gas for the purpose of illumination, fuel and power, at any and at all times and at all places accessible from its mains. In order so to do, plaintiff has constructed extensive
57 gas works and laid mains and gas pipes in many of the streets of the city, and has invested large sums of money in the construction of its works and in the laying of its gas pipes and mains, and in other ways incident to its business. Plaintiff has, during the fifteen years last past, at all times produced and furnished steam for heating and power purposes and electricity for the purposes of illumination and power to said city of St. Paul and its inhabitants, and in so doing has constructed large electrical plants and many miles of pole lines and wires, as well as steam conduits and pipes, and has installed large amounts of electrical machinery and appliances, all at great expense.

In and by said act of March 1, 1856, and at all times since the passage of said act, it is and has been provided, among other things, as follows:

"SEC. 9. That it shall be the duty of the St. Paul Gas Light Company to prosecute the works necessary to the lighting the whole city and suburbs with gas, and to lay their pipes in every and all directions, whenever the board of directors shall be satisfied that the expenses thereon shall be counterbalanced by the income accruing from the sales of gas. It shall also be their duty to put the gas works into successful operation as soon as practicable: Provided, that whenever the corporation of the city of St. Paul shall, by resolution of the board of aldermen, direct lamps to be erected and lighted in the streets of the city, the company shall make contract therefor, and furnish and provide, lay, set up and keep in good repair, at their own proper expense and charge, the street posts and lamps, and their pipes and meters, all to be of the best qual-
58 ity of work and material now in use. In consideration whereof, the said corporation of the city shall pay quarterly to the St. Paul Gas Light Company an interest of eight per cent. per annum on the amount of the sum of the original cost of said street lamps and lamp posts, gas meters and gas pipes, and the cost of laying and erecting the same. But said company shall not be bound to lay every pipe in such places where the proceeds from the sale of gas light would not be sufficient to defray the expenses of furnishing the same.

* * * * * * *

"SEC. 14. The corporation of the city of St. Paul and the board of directors of the St. Paul Gas Light Company may contract for

and make regulations relating to the lighting of said city with gas, in such manner as may be agreed upon, and they may make generally such contracts in relation to the business of the company as may be beneficial to them and the public.

"SEC. 15. This act shall be in force for the term of twenty-five years from and after the first day of January, in the year of our Lord one thousand eight hundred and fifty-seven, unless the company hereby incorporated shall sell and convey, within the said term of twenty years, their gas works, lands, rights and privileges, as herein provided, to the city of St. Paul; in which event said gas works and all rights, powers and privileges hereby granted shall be invested in the mayor, aldermen and citizens of St. Paul, or (in) their corporate capacity; and the said city shall have all the powers and be invested with all the rights and privileges of the individual stockholders, and also of all such as are invested in the president and directors of said company by virtue of this act; but should the said city not resolve to purchase at either of the times provided herein, then this act shall be in full force for an additional term of ten years from and after the last date mentioned for such sale and purchase, and no longer.

59 "SEC. 16. This act shall be in force from and after its passage, and shall be deemed a public act, and be favorably construed for the purposes herein expressed and declared in all courts and places."

At various times heretofore, subsequently to the performance by plaintiff of the conditions named in said act of March 1, 1856, to wit, during and subsequent to the year 1857 and prior to Jan. 1, 1897, the corporation of the city of St. Paul has from time to time, by resolutions of its board of aldermen and common council, directed lamps and lamp posts to be erected and lighted by plaintiff in the streets of said city of St. Paul to the aggregate number of 3,362, and in each and every such case plaintiff has contracted for and has furnished, provided, laid, set up and kept in good repair, at its own proper expense and charge, all such street lamps and posts and the pipes and meters connected with or necessary to supply the same, all of the best quality of work and material at any such time in use.

And except as hereinafter stated, plaintiff has, ever since the installation of each of said 3,362 lamps, supplied the same with illuminating gas and kept the same lighted nightly, under express contract or contracts with said defendant so to do, at a price and for a period specified in each of said contracts.

On the 14th day of March, 1896, the plaintiff and the defendant entered into a written contract for the furnishing of the necessary gas and lighting said gas street lamps for the period of one

60 year from April 1, 1896, a copy of which said contract is hereto annexed and marked "Exhibit A." The specifications recited in said contract contain the following provision, which is the only provision in said specifications in any way material to the issues between the parties in this action, to wit: "The district to be covered by gas lighting includes all the streets in the territory

now lighted by gas. The number of gas lights now in service and to be lighted and maintained until otherwise ordered is 3,031. The right, however, is reserved to said city to decrease, from time to time, the number of lamps in service, and to discontinue the lighting by gas of the whole or any portion of any street or particular number of streets, or any particular section of said city, and from and after the service by said city upon said contractor of written notice of the discontinuance of any such lamp or lamps, the contractor shall not be entitled to any compensation for the further lighting of the lamp or lamps so ordered discontinued." And on the 16th day of March, 1897, the plaintiff and the defendant entered into a further written contract for the furnishing of gas and lighting said street lamps for the period of nine (9) months from and after the first day of April, 1897, and the specifications incorporated into this contract contain the same provisions as to the district to be covered by gas lighting, the number of lamps in service and the right to decrease, from time to time, the number of lamps in service and dis-
61 continue the lighting thereof, as contained in the contract of March 14, 1896, hereinabove referred to, and also contain the following provision:

"It is also expressly understood and agreed that none of the terms or provisions of this contract are to be construed to waive or modify in any way the claim of said company that said city of St. Paul is also under obligation to pay to said St. Paul Gas Light Company interest at the rate of eight (8) per cent. per annum, payable quarterly, upon the original cost of the street lamps, lamp posts, gas meters, gas pipes and the cost of erecting and laying the same, at any time provided by said St. Paul Gas Light Company, at the request or order of said city of St. Paul, under the provisions of section nine (9) of the act of the legislature of said State of Minnesota constituting the charter of said St. Paul Gas Light Company, it being understood that neither party to this contract by the execution thereof waives any of its rights or claims in reference thereto."

Prior to the first day of January, 1897, the defendant directed the plaintiff to cease to light 672 of the 3,362 street lamps then in service, and terminated, as to said 672 lamps so ordered discontinued, the contract between the plaintiff and the defendant under which the plaintiff had theretofore supplied gas thereto and lighted the same, and plaintiff thereupon ceased to light said 672 lamps and defendant ceased to pay for the supply of gas thereto or the lighting thereof, and between Jan. 1, 1897, and Dec. 31, 1897, inclusive, plaintiff supplied gas to and lighted, under contract between plaintiff and defendant, only 2,690 of said 3,362 street lamps, while 672 of said 3,362 street lamps remained, during said
62 last-mentioned period, out of service, idle and unused, and the parties have made no further contract for the lighting thereof.

The original cost to plaintiff of the purchase and erection of said 3,362 street lamps and posts and of the pipes and meters appurte-

nant thereto was the sum of $85,539.53, all of which has been paid and expended therefor by plaintiff prior to said Jan. 1, 1897.

And the sum of the original cost of said 672 street lamps, and the erection thereof, and of the purchase and laying of the service pipes connected therewith, was the sum of $17,830.75.

The defendant duly paid unto the plaintiff, except as hereinafter stated, interest at the rate of 8 % per annum upon the original cost of each of said 3,362 street lamps and of the service pipes connected therewith and of the erection and laying of the same respectively for the whole period elapsing between the date of the erection and laying of such lamps and service pipes and the first day of January, 1897, and has at all times heretofore continued to pay interest upon the original cost of all the said lamps and the said service pipes, except the 672 discontinued, as aforesaid. By certain contracts made between the plaintiff and the defendant providing for the lighting of the streets of plaintiff during the years 1886 to 1890 and 1891, inclusive, the interest upon the cost of said 3,362 street lamps and their connections was by express provisions of said contracts expressly limited to the lives of said contracts respectively, reduced to
63 rates lower than 8 % per annum, in some instances 7 % per annum, and in one instance to 6 % per annum, and during the periods covered by said contracts respectively interest was paid by plaintiff to defendant at the reduced rates named in said contracts respectively. Each of said contracts contained, in addition to the provision making such temporary reduction of the said interest rate, a recital substantially identical with the recital as to the obligation of the defendant under section nine (9) of the plaintiff's charter, contained upon page 1 of Exhibit A, attached hereto.

The first claim made by defendant, that it was not under obligation to pay interest upon the original cost of all said 3,362 street lamps and their connections, and of laying and erecting the same, was made in and by a resolution of the common council of the defendant, approved Aug. 20, 1897, a true copy of which appears in folios 20 and 21 of the complaint herein.

On the first day of July, 1897, or immediately thereafter, plaintiff demanded of defendant the payment of interest for the six months next preceding said day, at the rate of eight (8) per cent. per annum, upon the cost of said 3,362 street lamps and posts erected by plaintiff prior to Jan. 1, 1897; and thereafter and on the first day of January, 1898, or immediately thereafter, plaintiff demanded of defendant the payment of interest for the six months next preceding said day, at the same rate, upon the original cost of said 3,362
64 street lamps and posts. Despite whereof defendant has wholly failed and refused to pay either of said sums, save and except as follows, to wit: Upon the twentieth day of October, 1897, defendant paid unto plaintiff the sum of $2,710.21, and upon the eighteenth day of January, 1898, defendant paid unto plaintiff the sum of $2,713.83, the first of said payments being made on account of interest upon the original cost of construction of said 3,362 lamp posts for the first six months of the year 1897; and the second of said payments being made on account of the interest upon said cost of

said lamp posts for the second six months of said year; but defendant has wholly refused to pay unto plaintiff the balance of the interest demanded by plaintiff as aforesaid.

Conclusions of Law.

As conclusions of law, I find:

First. That defendant is under obligation, by reason of the facts aforesaid, to pay unto plaintiff quarterly during the term for which said act of March 1, 1856, shall remain in force, to wit, to and including the thirty-first day of December, 1906, interest at the rate of eight (8) per cent. per annum upon the cost of said 3,362 lamp posts, as above determined.

Second. That plaintiff is entitled to judgment against said defendant for the sum of $1,419.12, with interest upon the sum of $711.37 from the first day of July, 1897, and upon the sum
65 of $707.75 from the first day of January, 1898, both at the rate of seven (7) per cent. per annum; that is to say, at this date, for the total sum of $1,604.51; and for its costs and disbursements in this action sustained or incurred.

Let judgment be entered accordingly.

GEORGE L. BUNN,
District Judge.

St. Paul, May 13, 1899.

EXHIBIT A.

This agreement, made and entered into this fourteenth day of March, A. D. 1896, by and between the St. Paul Gas Light Company, a corporation organized and doing business under and by virtue of an act of the legislature of the State of Minnesota, and having its principal place of business in the city of St. Paul, in said State, party of the first part, and said City of St. Paul, Minnesota, party of the second part, witnesseth:

Whereas, said City of St. Paul, party of the second part, desires its streets, alleys, lanes, landings, parks and other public places and public buildings of said city to be lighted with gas for a period of one (1) year from and after the first day of April, 1896, and said St. Paul Gas Light Company, party of the first part, is engaged in the business of supplying gas light to the residents of said city of St. Paul and its vicinity; and

66 Whereas, under and by virtue of the terms of section nine (9) of the act of the legislature of said State of Minnesota constituting the charter of said St. Paul Gas Light Company, party of the first part, said City of St. Paul, Minnesota, party of the second part, is under obligation to pay to said party of the first part interest upon the original cost of the street lamps, lamp posts, gas meters, gas pipes, and the cost of erecting and laying the same, at any time provided by said party of the first part for the service of said party of the second part at the request and order of said party of the second part, at the rate of eight (8) per cent. per annum, payable quarterly; and

Whereas, the proposal of the said St. Paul Gas Light Company, party of the first part, for lighting said city of St. Paul with gas, and for furnishing said city of St. Paul with gas for public buildings, according to certain specifications thereafter prepared by the board of public works of said city, which specifications are hereinafter mentioned and made a part hereof, having been accepted by the common council of said city of St. Paul:

Now, therefore, in consideration of the premises and of the mutual promises and agreements of the respective parties hereto, hereinafter set forth, it is hereby mutually covenanted and agreed as follows:

67 Article first.

1. Said party of the first part hereby covenants and agrees to furnish to said party of the second part a supply of merchantable illuminating gas, of not less than eighteen (18) candle power, full and sufficient to light at least three thousand and thirty-one (3,031) street lamps now in place in the streets, alleys, lanes, landings, parks and other public places within the territorial limits of said city of St. Paul, and to maintain and light the same, according to the specifications for gas lighting for said city of St. Paul heretofore prepared by said board of public works and now on file in the office of the city clerk of said city, a duly certified copy of which specifications is hereto attached and hereby referred to and made a part of this contract, and is marked "Exhibit A;" and also to furnish to said party of the second part a supply of such gas for use in all the public buildings using gas at the present time, or where gas may be ordered by the proper city authorities during the term of this contract.

2. Said party of the second part hereby covenants and agrees to pay to said party of the first part for each street lamp so to be lighted and maintained at the rate of twenty-three dollars ($23) per lamp per annum; and for all gas to be used in the public buildings of said city of St. Paul at the rate of one dollar and thirty cents ($1.30) per thousand cubic feet of gas so used; all of such
68 payments to be made monthly on estimates approved by said board of public works.

3. Said party of the first part further covenants and agrees to and with said party of the second part to erect and supply with light, upon the terms and conditions in this contract stated, all of the street lamps that may hereafter be ordered by said party of the second part to be placed upon any of the streets, alleys, lanes, landings, parks or other public places of said city during the continuance of this agreement; provided, however, that nothing in this agreement shall be construed to give any right or authority to said party of the second part to require said party of the first part to erect lamp posts or to light lamps on any street, alley, lane, landing, park or other public place at any point or points in said city at which the main pipes of the said party of the first part have not been laid.

Article second.

1. Said party of the second part hereby covenants and agrees to and with said party of the first part to receive and accept said supply of gaslight to be furnished and delivered by said party of the first part, according to said specifications, as above provided, and to pay for the same in monthly payments, as above provided, at the rate of twenty-three dollars ($23) per annum per lamp for
69 street lamps, and at the rate of one dollar and thirty cents ($1.30) per thousand cubic feet of gas so to be furnished for the public buildings of said city, party of the second part; and in case of default by said party of the second part in the monthly payments, as hereinabove provided, of any account due and rendered for a period of time exceeding thirty (30) days, then and in that case said party of the second part hereby agrees to pay interest upon the amount of any such account at the rate of seven (7) per cent. per annum from and after the date when said account should have been paid, as hereinabove provided; all of which shall be payable out of the funds raised by taxation to provide for the lighting of said city of St. Paul.

2. Said party of the second part hereby covenants and agrees to and with said party of the first part that the said common council of said city of St. Paul shall provide by ordinance for the protection of all said lamps and lamp posts, and the appurtenances thereof, against any damages or injury by careless or malicious persons, and shall, by such ordinance or ordinances, make it a penal offense for any person or persons to interfere, by lighting or extinguishing, or otherwise interfering with said street lamps, as aforesaid; and shall also require the police force of said city of St. Paul, as a special duty, to guard and care for said lamps and lamp posts embraced in this contract, and make it the duty of said police force to arrest
70 summarily any person or persons violating the ordinance or ordinances passed or to be passed by said second party, in accordance with the terms of this contract.

Article third.

1. It is expressly understood and agreed that this contract, and all the terms and provisions thereof, shall be and remain in force for the period of one (1) year from and after the first day of April, A. D. 1896; and that all the terms and conditions thereof shall be, and they are hereby in all things binding upon the parties hereto, their successors and assigns.

2. It is also expressly understood and agreed that none of the terms or provisions of this contract are to be construed to annul or modify in any way the obligation of said City of St. Paul to pay to said St. Paul Gas Light Company interest at the rate of eight (8) per cent. per annum, payable quarterly, upon the original cost of the street lamps, lamp posts, gas meters, gas pipes, and the cost of erecting and laying the same, at any time provided by said St. Paul Gas Light Company for the service of said city of St. Paul, at the request and order of said City of St. Paul, as provided by the terms

of section nine (9) of the act of the legislature of said State of Minnesota, constituting the charter of said St. Paul Gas Light Company, as aforesaid.

In witness whereof, said St. Paul Gas Light Company has caused its corporate seal to be hereto affixed and these presents to
71 be subscribed by its secretary the day and year first above mentioned. And said City of St. Paul, Minnesota, party of the second part, has caused the corporate seal of said city to be hereto affixed, and these presents to be subscribed by its mayor and clerk, and to be countersigned by the comptroller of said city, the day and year first above written, in duplicate.

ST. PAUL GAS LIGHT COMPANY,
By B. F. ELLISON, *Secretary.*
CITY OF ST. PAUL,
By ROBERT A. SMITH, *Mayor.*
MATT. JENSEN, *City Clerk.*

Countersigned:
J. J. McCARDY,
City Comptroller.

Signed, sealed and delivered in presence of—
A. W. REYNOLDS.

Judgment.

(Title of Action.)

Pursuant to the findings of fact and conclusions of law duly filed in the above-entitled action on the thirteenth day of May, A. D. 1899:

Now, on motion of Messrs. Squires & Cutcheon, attorneys for plaintiff, it is hereby adjudged that the plaintiff herein recover of said defendant City of St. Paul the sum of sixteen hundred,
72 seventeen and $\frac{60}{100}$ dollars, with twenty-one and $\frac{34}{100}$ dollars costs and disbursements, in all amounting to $1,638.95.

Signed this twenty-fourth day of June, A. D. 1899.

EDWARD G. ROGERS, *Clerk.*

Notice of Appeal.

(Title of Action.)

To Messrs. Squires & Cutcheon, attorneys for the above-named plaintiff, and to E. G. Rogers, clerk of said district court:

You will please take notice, that the above-named defendant appeals to the supreme court of the State of Minnesota from the judgment of the said district court entered herein, on the 24th day of June, A. D. 1899, in favor of the plaintiff and against the defendant for the sum of $1,638.95 damages and costs and from the whole thereof.

Dated this 28th day of June, A. D. 1899.

JAMES E. MARKHAM,
Attorney for Defendant.

73 STATE OF MINNESOTA:

Supreme Court.

ST. PAUL GAS LIGHT COMPANY, Plaintiff,
vs.
CITY OF ST. PAUL, Defendant.

Stipulation.

It is hereby stipulated and agreed by and between the parties to the above-entitled action that any and all acts and parts of acts of the legislature of either the Territory of Minnesota or of the State of Minnesota that may be regarded by either party to said action as material to the subject of controversy may be read by such party upon any hearing herein in either the supreme court of Minnesota or in the Supreme Court of the United States, and that said acts, when so read, shall have the same force and effect as if the same were set forth at length in a settled case containing all the evidence introduced upon the trial of said action.

St. Paul, July 31st, A. D. 1899.

SQUIRES & CUTCHEON,
Attorneys for Plaintiff.
JAMES E. MARKHAM,
Attorneys for Defendant.

74 Endorsed: 11741. Filed Nov. 27, 1899. D. F. Reese, clerk.

75 11741.

STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1899.

ST. PAUL GAS LIGHT CO., Respondent,
vs.
THE CITY OF ST. PAUL, Appellant.
No. 119. Syllabus.

Held, under the charter of the St. Paul Gas Light Co. (ch. 53, L. 1856), the City of St. Paul is not compelled to pay the gas light Co. compensation for street gas lamps which the city is not using to light its streets and is not by any contract required to continue to use.

Judgment reversed and a new trial granted.

76 11741.

STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1899.

ST. PAUL GAS LIGHT CO., Respondent,
vs.
THE CITY OF ST. PAUL, Appellant. } No. 119. Opinion.

The question involved in this case is whether the St. Paul Gas Light *Light* Co. is entitled to compensation for street gas lamps, lamp posts, connecting pipes, and gas meters remaining in the streets of St. Paul, which the city ordered the gas light Co. to erect, and which on being so erected the city used for a time, but is not now using.

The charter of the gas light Co. provides that it shall furnish and lay these and keep them in repair at its own expense, and that the city shall pay to the gas Co. as compensation therefor "an interest at 8 per cent. per annum on the amount of the sum of the original cost of said street lamps and lamp posts, gas meters and gas pipes, and the cost of laying and erecting the same." There is no express provision as to how long the city shall pay such compensation, or whether it shall pay the same after it has ceased to use the street lamps, and the question must be decided by the interpretation of several provisions of the charter.

The gas light Co. was incorporated by ch. 53, Laws of 1856. The act took effect January 1, 1857, and provides that at the end of twenty years the city shall have the privilege of buying the gas plant; but if the city shall at that time decline to do so, it may exercise a like option at the end of twenty years more; "but should the city
77 not resolve to purchase at either of the times provided herein, then this act shall be in full force for an additional term of ten years from and after the last date mentioned (January 1, 1897) for such sale and purchase, and no longer."

The city did not exercise its option at the end of either 20-year period, and so the charter of the gas light Co. will continue to January 1, 1907, a period of 50 years.

The charter contains the following provisions:

"SEC. 9. That it shall be the duty of the St. Paul Gas Light Company to prosecute the works necessary to the lighting the whole city and suburbs with gas, and to lay their pipes in every and all directions, whenever the board of directors shall be satisfied that the expenses thereon shall be counterbalanced by the income accruing from the sales of gas. It shall also be their duty to put the gas works into successful operation as soon as practicable: Provided, that whenever the corporation of the city of St. Paul shall, by resolution of the board of aldermen, direct lamps to be erected and lighted in the streets of the city, the company shall make contract therefor, and furnish and provide, lay, set up and keep in good repair, at their own proper expense and charge, the street posts and lamps, and their pipes, and meters, all to be of the best quality of

work and material now in use. In consideration whereof, the said corporation of the city shall pay quarterly to the St. Paul Gas Light Company an interest of eight per cent. per annum on the amount of the sum of the original cost of said street lamps and lamp posts, gas meters and gas pipes, and the cost of laying and erecting the same. But said company shall not be bound to lay every pipe in such places where the proceeds from the sale of gas light would not be sufficient to defray the expenses of furnishing the same."

"SEC. 14. The corporation of the city of St. Paul and the
78 board of directors of the St. Paul Gas Light Company may contract for and make regulations relating to the lighting of said city with gas, in such manner as may be agreed upon, and they may make generally such contracts in relation to the business of the company as may be beneficial to them and the public."

These are all of the provisions of the charter which we deem it necessary to consider. It will be observed that the clause first above quoted is found in sec. 9.

The charter provides no way in which the city can procure gas to light its streets except that provided by sec. 14, under which the city must make a contract voluntarily entered into by both parties in order to procure gas for that purpose. The city and the gas Co. have made such contracts from time to time, some of the contracts covering a period of five years each and others a period of only one year each.

Many things might have occurred which would make it proper that the city should abandon the use of gas for street-lighting purposes in the whole or a particular part of the city. For instance, a suburb of the city within the corporate limits might have been supported by some large factory or other industry which was discontinued, and that part of the city might for that reason have gone to decay and its population become so reduced as to render it proper and expedient to cease lighting its streets, or such suburb might have been destroyed by fire and never have been rebuilt. Again, it might have become necessary to substitute electricity for gas in lighting the city or a part of it.

It seems to us that it would be unreasonable to hold that if at the inception of the 50 years which this charter was to run the city had ordered such street lamps to be erected, had used them 10 years under a contract for lighting the streets which expired at the end of
that time, and then, on account of some such contingency,
79 had ceased to light the streets with gas, the city would be bound to pay such compensation for maintaining and keeping in repair the street lamps, lamp posts, connecting pipes, and meters for 40 years more and to permit them to encumber the streets for that length of time, although the city had not a particle of use for such street lamps during all of that time. Again, it would be unreasonable to hold that the city council might, under sec. 9, compel the gas Co. to erect street lamps, and then, after using them a month or a year, abandon the use of gas for street-lighting purposes, and thereby avoid all liability to pay any other compensation for the erection and use of the street lamps than 8

per cent. per annum during such use on the cost of erecting the same.

But we are of the opinion that sec. 9 does not give the council the right in its discretion to compel the erection of street lamps regardless of how long the city may use them and without protecting the gas Co. by stipulating a length of time during which the city shall use them.

Sec. 9 provides that whenever the city "by resolution of its board of aldermen directs lamps to be erected and lighted in the streets of the city" the gas Co. shall erect the same and keep them in repair; but, as we have seen, the city has no power under the charter to compel the streets to be lighted except by making for that purpose a contract voluntary as to both parties. When making such a contract the gas Co. can refuse to contract for lighting any street lamps except those already erected, and before the city can compel the erection of more lamps it must first make a contract for lighting them. In making such a contract, the gas Co. can protect itself by insisting that such contract for lighting such new lamps shall cover a period of time of sufficient length that the 8 per cent. per annum to be paid during that time will remunerate the gas Co. for
80 erecting the lamps. We are of the opinion that under these circumstances the charter does not require the city to pay such compensation for street lamps which it is not under any contract to use.

This, in our opinion, is the more reasonable and proper construction of the provision of the charter and the one which should be adopted. We therefore hold that the city is not liable for such compensation for street lamps after it has ceased the use of the same and abandoned the use of gas in lighting its streets.

The claims of respondent that there has been by both parties a practical construction of the charter which binds the city to pay such compensation for street lamps which it is using is untenable.

Neither can we hold that any of the contracts made between the parties under sec. 14 binds the city to pay such compensation for street lamps not in use.

The judgment is reversed and a new trial granted.

CANTY, *J.*

81 11741.

STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1899.

ST. PAUL GAS LIGHT CO., Respondent,
vs.
THE CITY OF ST. PAUL, Appellant. } No. 119. Order.

Upon the stipulation of the parties hereto in open court, it is ordered that the order heretofore made herein be, and it is hereby, modified so as to read as follows: "Ordered that the judgment appealed from be reversed, and that final judgment be entered in this

court for the defendant, but without prejudice to the plaintiff's right to apply to the court for a reargument."

Dated November 27th, 1899.

82 [Endorsed:] No. 11741. State of Minnesota, supreme court. St. Paul Gas Light Co., respondent, *vs.* The City of St. Paul, appellant. Copy. Opinion and syllabus. Original filed November 14, 1899. D. F. Reese, clerk. October term, A. D. 1899. Canty, J.

83 STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1899.

ST. PAUL GAS LIGHT COMPANY, Respondent,
vs.
CITY OF ST. PAUL, Appellant. } No. 119.

Pursuant to an order of court, duly made and entered in this cause on the twelfth day of December, A. D. 1899—

It is here and hereby determined and adjudged that the judgment of the court below herein appealed from, to wit, of the district court of the second judicial district, sitting within and for the county of Ramsey, be, and the same hereby is, in all things reversed; and it is hereby further adjudged that The St. Paul Gas Light Company, the plaintiff and respondent herein, take nothing by its action against The City of St. Paul, the defendant and appellant herein, and that said defendant go hence without day; and it is further determined and adjudged that the appellant above named do have and recover of said St. Paul Gas Light Company, respondent herein, the sum and amount of fifty-nine and $\frac{58}{100}$ dollars ($59.58), costs and disbursements in this cause in this court, and that said appellant have execution for the enforcement thereof.

Dated and signed this 12th day of December, 1899.

By the court:

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

Statement for Judgment.

Costs allowed by statute	$25.00
Clerk's fees for making return	
Printer's fees	21.08
Clerk's fees, supreme court	13.50
Filing mandate	
Affidavits and acknowledgments	
Postage	
	$59.58

84 [Endorsed:] 11741. State of Minnesota, supreme court. Transcript of judgment. Filed Dec. 12, A. D. 1899. D. F Reese, clerk. —— ——, attorney for ——. Page No. 152, X Book

STATE OF MINNESOTA, *ss:*

Supreme Court.

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court, at the capitol, in the city of St. Paul, this twelfth day of December, A. D. 1899.

D. F. REESE, *Clerk.*

85 STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1899.

ST. PAUL GAS LIGHT COMPANY, Respondent, *vs.* CITY OF ST. PAUL, Appellant. } No. 119. Appeal from District Court, Second Judicial District, County of Ramsey.

This cause having been duly argued and submitted at the general October term of this court, A. D. 1899, upon the return to the appeal herein:

Now, after full and mature deliberation had thereon, it is here and hereby ordered that the judgment of the court below, herein appealed from, be, and the same hereby is, in all things reversed and final judgment ordered for defendant, and that the appellant above named have judgment accordingly.

Entered December 12th, A. D. 1899.

By the court.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original order for judgment entered in the above-entitled cause.

Attest: D. F. REESE, *Clerk.*

86 [Endorsed:] No. 11741. State of Minnesota, supreme court. Copy of order for judgment. Filed Dec. 12, A. D. 1899. D. F. Reese, clerk. Entered on page 37 "N."

87 STATE OF MINNESOTA:

Supreme Court, General October Term, A. D. 1899, Thursday Morning, 9.30 o'clock.

OCTOBER 26TH, A. D. 1899.

Court convened pursuant to adjournment, all the justices being present.

ST. PAUL GAS LIGHT COMPANY, Respondent, *vs.* CITY OF ST. PAUL, Appellant. } Cal. No., 119; Reg. No., 11741.

This cause came on to be heard this day upon the return to the appeal herein.

Thereupon the same was argued by counsel, submitted to the court for decision, and taken under advisement.

A true record.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

The foregoing is a full and true copy of the minutes of argument in the above-entitled cause.

Attest: D. F. REESE, *Clerk.*

88 [Endorsed:] 11741. State of Minnesota, supreme court. Copy of minutes of argument. Filed Dec. 12, A. D. 1899. D. F. Reese, clerk.

89 [Endorsed:] No. 11741. State of Minnesota, supreme court. St. Paul Gas Light Co., respondent, against City of St. Paul, appellant. Judgment-roll. Filed December 12, 1899. D. F. Reese, clerk.

90 STATE OF MINNESOTA:

Supreme Court.

STATE OF MINNESOTA, *Office of Clerk of Supreme Court,* } ss:

I, Darius F. Reese, clerk of the supreme court, State of Minnesota, do hereby certify and return to the Supreme Court of the United States that the foregoing and annexed transcript of record is a full and complete transcript of the record and all proceedings, with all things concerning the same, had in the said supreme court of the State of Minnesota in the case between The St. Paul Gas Light Company, respondent, and The City of St. Paul, appellant, including stipulation of the parties and the opinion of the said supreme court therein, as appears from the original files and records.

And I do further certify and return that I have annexed to said transcript and included therewith, and that the foregoing are, copies of the petition for writ of error, with allowance of same, and of the

assignments of error and of the bond as the same rem ain on fil and of record in said supreme court of the State of Minnesota, and are the original writ of error from the Supreme Court of the United States and the original citation issued thereon, with proof of service thereof, and that the foregoing constitutes a true, full, and complete return to said writ of error.

In witness whereof I have hereunto set my hand and the seal of said supreme court of the State of Minnesota, at the capitol, at St. Paul, Minnesota, this 4th day of January, A. D. 1900.

Seal of the Supreme Court, State of Minnesota.

D. F. REESE,
Clerk of the Supreme Court Minnesota.

[Endorsed:] State of Minnesota, supreme court.

Endorsed on cover: File No., 17,606. Minnesota supreme court. Term No., 183. The St. Paul Gas Light Company, plaintiff in error, *vs.* The City of St. Paul. Filed January 15th, 1900.